80-1427

No. .....

Office-Supreme Court, U.S.
FEB 23 1981
ALEXANDER STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ROBERT DIZAK and EDWIN GORSKI,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EDWIN I. GORSKI
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New York, New York
(212) 679-5441

Counsel for Petitioners

Question Presented

May the District Court in a criminal matter impose costs not authorized by statute upon defense counsel personally?

Related questions before this Court:

Should 28 USC Section 1927 be strictly construed because it is penal in nature?

Is an appeal from the District Court by defense counsel in the criminal matter assessing them personally costs not authorized by statute frivolous, and may the Second Circuit Court of Appeals award to the United States attorney's fees on such appeal?

Parties Below

The parties to the appeal below were:

Appellants: Defense counsel Robert Dizak and Edwin Gorski.

Appellee: United States of America.

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In the

Supreme Court of the United States

October Term, 1981

No. .....

Robert Dizak and Edwin Gorski,

Petitioners,

v.

United States of America,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Opinions Below

The opinion of the court of appeals is not officially or unofficially reported. The opinion of the district court is likewise not reported.

Jurisdiction

The judgment of the court of appeals was dated and entered December 22, 1980. No order respecting a rehearing was made, and no order with respect to an extension of time within which to petition for certiorari was made. This petition is filed within 90 days of entry of the judgment of the court of appeals. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

Statutory Provisions

The texts of 28 U.S.C. Section 1920, Legislative History of 28 U.S.C. Section 1920, Par. 6 (as enacted October 28, 1978), 28 U.S.C. 1828, 28 U.S.C. Section 702, 706 (a), (b), 1101(d), 28 U.S.C. 1927, 28 U.S.C. 1915 (a) are set forth in the appendix at page 1a et seq.

Statement of the Case

On June 28, 1978 the defendant, Ronald DeStrulle was arrested by agents of the Federal Bureau of Investigations along with two other persons. An indictment was subsequently handed up on July 14, 1978 naming Ronald DeStrulle and one of the arrested persons, Naftali Cohen, as co-defendants.

The indictment alleged certain allegations of conspiracy, bank larceny and violations of interstate commerce transactions. The co-defendant, Naftali Cohen, pleaded guilty to a certain charge and subsequently DeStrulle was the remaining sole defendant. A superseding indictment against DeStrulle was handed up on or about September 1, 1978. Between the indictment of June 28 and the indictment of September 1, the U.S. Prosecutor, using a potential defendant as informant, recorded certain conversations between that informant, the defendant DeStrulle and both co-counsel of DeStrulle whose offices were in the same suite.

The informant, one Thierman, obtained access to defense counsel's chambers by means of a fraudulent Grand Jury subpoena provided by the Assistant U.S. Prosecutor, one Raymond Levites.*

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* The U.S. Prosecutor requested subsequently that the court change its finding as to the fraudulent subpoena, but the district court nevertheless found it to be such in an opinion letter dated May 11, 1979.

Defense counsel prior to the trial of the defendant brought the matter to the attention of the district court and moved that pursuant to *Massiah* v. *United States,* 377 U.S. 201, the indictment against the defendant should be dismissed. Defense counsel objected to the invasion of their private chambers and prior to trial, requested that the matter be resolved. The district court in a final dialogue with counsel before trial advised them that if the defendant is found not guilty then the issue would be moot, and therefore, the court would not address itself to the question prior to trial.

The defendant was subsequently found guilty by a jury and defense counsel then made the motion for relief relative to the tapings of both defense counsel with defendant DeStrulle.*

Upon defense counsel's renewal of the motion after trial pursuant to the district court's pre-trial direction, the audibility and clarity of the tapes became an issue. The defendant alleged that various conversations took place whether or not audibly recorded, and the Prosecutor alleged that the co-conspirator informant was directed to refrain from certain conversation. The government produced a tape analyst whom they called an expert and who was objected to by the defense. The court nevertheless appointed that government expert and advised that an attempt would be made to obtain clarity of the tapes. The court in doing so advised that if the expert were not able to extract the conversations which the defense alleged to have occurred, then the court would force defendant and defense counsel personally to pay for the cost of the analyst. This was over objection. The

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* In addition to the taping of defense counsel in their chamber on August 22, 1978, the Prosecutor by means of a telephone conversation by Thierman to one of the defense lawyers taped that telephone conversation likewise. That recorded telephone conversation is not the subject of the within appeal.

district court never specifically addressed itself to 28 U.S.C. Section 1927 which solely provides that an attorney "who so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously may be required by the court to satisfy personally such excess costs."

The motion to set aside the verdict which was based on 4th, 5th and 6th Amendment considerations and arising among others out of the conversation which the informant recorded was decided by the court in a decision dated April 24, 1979. In that decision, the court denied defendant's motion and set sentencing for the following April 27, and indeed conducted the sentencing on that date.

Subsequently, the Assistant U.S. Prosecutor, Raymond Levites, who authorized the co-conspirator and informant, Thierman, to record the conversations between the defendant and the attorneys then moved the district court to order counsel for the defendant to personally pay for the tape analyst who purportedly enhanced portions of the tape. The district court in granting the motion said it did so because "the attorneys were, in my view, liable for this reimbursement, because they were witnesses to the fact of what occurred during the conversation in their chambers". The district court concluded that because the attorneys were present at certain times to a lesser or greater degree during the surreptitious recording that they were liable for reimbursement because the government was put to an expense in order to make the tapes audible.* Upon the analyst's transcription of the tapes, some parts were still indecipherable or not capable of establishing the exact conversations which the defense alleged took place.**

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* The court upon first hearing the tapes concluded itself that the tapes were not completely audible.

** The court found that one defense counsel participated in the conversations for a relatively brief period of time, leaving the

The appeal from the district court judgment was taken timely and promptly. The Second Circuit Court of Appeals affirmed the district court's opinions without its own opinion. The Court of Appeals then without opinion said the appeal is frivolous and awarded to the United States as damages attorney's fees and double costs on the appeal.

The district court did not address itself to specifically 28 U.S.C. Sec. 1920, par. 6, which was enacted October 28, 1978 and relates primarily to compensation of interpreters under 28 U.S.C. Sec. 1828, and to compensation of court appointed experts in certain types of actions and proceedings.

The defendant was found by the District Court to be a pauper for purposes of the appeal from the judgment of conviction and prior to its decision to impose the experts' costs on the defendant and each of the defense counsel personally.*

Reasons for Granting the Writ

The writ should issue or summary reversal made because (i) the federal court of appeals has so far departed from the accepted and usual course of judicial proceedings, and

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room for other purposes. The court likewise in concluding that the conversation as alleged did not take place did not address itself to the background dialogue which was superimposed by other conversations in varying parts of the tape. The court likewise found that there was at least two distinct gaps in the tapes of approximately four minutes and one minute each duration. There was also conversation found by the court to be conducted only between the defendant and the informant without either counsel present.

* The district court's decision imposed the expert's costs on both defense lawyers as well as the defendant himself. The judgment as signed deleted the defendant's name and inserted the language: "The foregoing is without prejudice to the United States' request to enter judgment against defendant, if the Court shall so direct."

so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision, and (ii) the federal court of appeals has rendered a decision in conflict with the decisions of other federal courts of appeals on the same matter, and in conflict with the decisions of this court.

(i) *The federal court of appeals so far departed from the accepted and usual course of judicial proceedings and sanctioned such by the district court.*

The authority of the district court to appoint an expert witness during trial is not in question. Federal Rules of Evidence 702, 706, *US* v. *Green,* 544 Fed. 2d 138, *Salem* v. *United States Lines Co.,* 370 US 31, reh. den. 370 US 965. However, the imposition by the district court in a criminal case of the cost of an expert used after trial by jury, upon each defense counsel personally is a departure by the lower court of the rules as promulgated by the Congress and this Court.*

The authority for the court to require an attorney under certain circumstances to satisfy certain costs personally is 28 U.S.C. 1927.** For the attorney to personally satisfy costs the section requires that the attorney "so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously." This statute should be strictly construed because it is penal in nature. *Monk* v. *Roadway Express, Inc.,* 599 F. 2nd 1378, affirmed 100 S. Ct. 2455, *U.S.* v. *Ross,* 535 F. 2nd 346. By statutory interpretation costs are those limited to 18 U.S.C. Sec. 1920.*** *Roadway Exp.*

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* This Court promulgated the Federal Rules of Evidence by order dated November 20, 1972.

** 28 U.S.C. 1927 is set forth in appendix page a.14

*** 18 USC 1920 is set forth in appendix page a.13

Inc. v. *Piper,* 100 S.Ct., 2459, 2461. (The first five paragraphs of Section 1920 relate to fees not germane to this matter.) Paragraph 6 of that section was enacted October 28, 1978 as P.L. 95-539, Sec. 7, 92 Stat. 2044, and was enacted after the verdict of the jury in the within criminal matter. That paragraph adds as costs which may be taxed "compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title 28 USC Sec 1828." The meaning and intent of paragraph 6 is set forth in the Legislative History of P.L. 95-539, Court Interpretation Act.*

The purpose of the Act "is to require the appointment of interpreters . . . and makes additional and technical changes to provide more effectively for the use of interpreters in Federal district courts, to comply with changes in the law and for other purposes." The legislative history explains the meaning of section 7 of the Act. (Section 7 of the act is the added paragraph 6 of 18 USC 1920, relating to costs.) The legislative history is thus: "Section 7 amends 28 U.S.C. Sec. 1920 to permit the taxation of the compensation of interpreters, and the salaries, fees, expenses and costs of special interpretation services under sections 1827 and 1828. Section 7 also makes express reference to the taxation of the compensation of a court appointed expert, *as permitted* by rule 706, of the Federal Rules of Evidence." ** (Italics supplied.) That rule*** provides that compensation for a court appointed expert in criminal cases is payable from funds which may be provided by law, i.e., Criminal Justice Act, 18 U.S.C., 3006A.

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* The Legislative History of P.L. 95-539 as applicable is set forth in appendix page a

** By the order of this court aforesaid the Federal Rules of Evidence took effect July 1, 1973. Rule 706 replaces rule 28 (a) of the Federal Rules of Criminal Procedure adopted in 1946.

*** Rule 706 is set forth in appendix page a16.

Under Rule 706 only in certain civil actions and proceedings shall the compensation of court appointed experts be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs (par. b). The taxation of costs of court appointed experts under paragraph 6 of Section 1920 (28 USC) are thus not applicable in criminal cases, and indeed not applicable in certain civil cases also. Thus attorneys may not be required to satisfy personally such "costs" under Sec. 1927 (28 USC) in criminal cases.

Moreover the Federal Rules of Evidence do not apply to preliminary questions of fact or preliminary examinations in criminal cases. Rule 1101 (d) (1) and (3). The district court was thus without jurisdiction under the Rules of Evidence to appoint an expert in a preliminary examination in the criminal case. Likewise pursuant to Rule 702, the expert who may be appointed under Rule 706 is for the purposes of trial to assist the trier of fact, i.e., the jury in this case, and not for a preliminary question of fact relating to audibility. The Second Circuit Court of Appeals erred in affirming the lower court and should not have awarded attorney's fees as damages on the appeal against defense counsel. "Like other sanctions, attorney's fees certainly should not be assessed lightly against counsel or without fair notice and an opportunity for a hearing on the record." *Roadway Exp., Inc.* v. *Piper,* 100 S.Ct. 2464, footnoting *Societe International* v. *Rogers,* 357 U.S. 197, 208-212, on due process implications of sanctions.

(ii) *The federal court of appeals has rendered a decision in conflict with the decisions of other federal court of appeals on the same matter, and in conflict with the decisions of this Court.*

It has been held in the 5th Circuit that 28 USC 1927 should be strictly construed because it is penal in nature.

Monk v. *Roadway Express, Inc.* (1979, CA 5 LA) 599 Fed. 2d 1378. Affirmed 100 S. Ct. 2455. The 6th Circuit has likewise held that Section 1927 should be strictly construed and also that "costs" should be limited to taxable costs. *United States* v. *Ross* (1976, CA 6 Ohio) 535 Fed. 2d 346. In *Monk,* it was held likewise that Section 1927 provided only for excess costs caused by vexatious behavior and consequent multiplications of proceedings by an attorney and not for other costs of the litigation. This Court decided in approval of the Fifth and Sixth Circuit decisions. *Roadway Exp., Inc.,* op. cit. This Court's opinion in *Roadway* was the affirmance on appeal of *Monk* cited above.

The Second Circuit Court of Appeals in affirming the district court in the within case has declined to follow the decisions of the Fifth and Sixth Circuits and indeed the decisions of this Court, *Roadway Exp., Inc.,* op cit.

CONCLUSION

The petition for a writ of certiorari should be granted or summary reversal should be granted.

Respectfully submitted,

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Counsel for Petitioners

APPENDIX

APPENDIX A

(Judgment of the United States Court of Appeals dated December 22, 1980)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

80-1360

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse at Bridgeport, Connecticut, on the 22nd day of December, one thousand nine hundred and eighty.

Present:

HON. THOMAS J. MESKILL
HON. WILLIAM H. TIMBERS,
Circuit Judges.

HON. LEE P. GAGLIARDI
District Judge,
Sitting by Designation

UNITED STATES OF AMERICA,
Appelleee,

v.

RONALD HOWARD STRULLE, a/k/a "Ronald DeStrulle,"
Defendant,

EDWIN I. GORSKI and ROBERT E. DIZAK,
Judgment Debtors-Appellants.

Appendix A

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is *affirmed* substantially for the reasons set forth in Judge Haight's opinion dated December 7, 1979 and, to the extent relevant, his opinion dated April 24, 1979.

Since we find that this appeal is frivolous, we award to the United States as damages the attorney's fees incurred by the government in connection with this appeal and double costs on this appeal, said damages and costs to be paid by appellants Edwin I. Gorski and Robert E. Dizak. 28 U.S.C. §1912 (1976); F.R.A.P. 38.

/s/ WM. H. TIMBERS
William H. Timbers
United States Circuit Judge

/s/ THOMAS J. MESKILL
Thomas J. Meskill
United States Circuit Judge

/s/ LEE P. GAGLIARDI
Lee P. Gagliardi
United States District Judge

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

APPENDIX B

(Partial Judgment on Decision by the Court dated August 5, 1980)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[S] 78 Cr. 530 (CSH)

UNITED STATES OF AMERICA,

—against—

RONALD HOWARD STRULLE, also known as "RONALD DESTRULLE,"

Defendant.

This cause and action having come on for hearing before the Court upon the Government's motion to recapture certain costs of the captioned criminal prosecution, and the issues having been duly heard and the Court having rendered a decision in its Memorandum Opinion and Order number 49414.

IT IS HEREBY ORDERED and ADJUDGED that the United States of America shall have judgment against the defendant's case attorneys Messrs. Edwin I. Gorski and Robert Dizak, jointly and severally, and shall recover of them the sum of $1,000.00 with interest thereon at the rate of six percent as provided by law from the date the United States paid the said costs. The foregoing is without prejudice to the United States' right to enter judgment against defendant, if the Court should so direct.

Judgment entered this
5 day of August 1980.

CHARLES S. HAIGHT, JR.
United States District Judge

RAYMOND T. BURGHARDT, *Clerk*
United States District Court
Southern District of New York

APPENDIX C

(Memorandum Opinion of the United States District Court dated December 7, 1979)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[S] 78 Cr. 530 (CSH)

UNITED STATES OF AMERICA,

—against—

RONALD HOWARD STRULLE, also known as "RONALD DESTRULLE,"

Defendant.

HAIGHT, *District Judge:*

Following jury trial, defendant Strulle was convicted as to each of the 84 counts of an indictment charging him with conspiracy to commit bank larceny; the substantive offense; interstate transportation of forged checks; possession of stolen mail; and the uttering of forged Government checks.

During the course of trial, and thereafter, defendant moved for the dismissal of the indictment, or in the alternative certain counts of the indictment, on the basis of a tape recording which had been made by a Government witness, Thierman, during a conference involving defendant and his counsel, Edwin Gorski, Esq. and Robert Dizak, Esq., that conference having occurred in counsel's offices. This Court rejected defendant's motion for post-conviction relief, for reasons stated in full in the Court's Memorandum Opinion and Order of April 24, 1979. Familiarity with that Memo-

randum is assumed for the sake of the following discussion.

The case is now before the Court for determination of the Government's motion for an order directing reimbursement of costs, initially incurred by the Government, in respect of presenting expert evidence at a post-conviction hearing, on the question of the full contents of the tape recording previously referred to.

Defendant's conviction is pending appeal, but the issues raised on appeal do not bear upon the Government's present application.

When the defendant's contentions, arising out of the Thierman recording, first came to the Court's attention, I directed that the Government carefully preserve the tape, and forward it to my chambers so that I could listen to it *in camera.* This was necessary because defendant and his counsel stated that, while Thierman was present during the conference in question, the defendant's strategy in respect of the pending trial was discussed at length. That gave rise to concern whether defendant's Sixth Amendment rights had been violated, within the context of *Weatherford* v. *Bursey,* 429 U.S. 545 (1977). The rather unsophisticated tape recorder with which I attempted to listen to the tape left large sections of the tape incomprehensible, a difficulty which was reflected in the rather incomplete transcript prepared by the Government which accompanied the tape.

In sworn affidavits submitted in support of defendant's post-conviction motion, defendant and his two attorneys swore that the incomprehensible sections of the tape contained, in fact, the detailed discussions of defense trial strategy and other sensitive areas which underlay their application for relief. I simply could not determine, from the technical facilities then available to me, whether those assertions were true or not. In those circumstances, and in

order to discharge the fact-finding obligations falling upon the trial court under the rule of *Weatherford,* I directed that a technical expert be retained, in an effort to improve the audibility of the tape recording, and to produce a more complete transcript.

I directed that the Government, which by equipping Thierman with a recording device and sending him off to a conference in counsel's chambers had invited the potential risk of a *Weatherford* problem, initially bear the cost of the clarifying expert's services. However, at the time when defendant and his counsel were insisting that a more complete rendition of the tape would inevitably reveal the presence of the conversations upon which the defendant's motion was based, I put defendant and his counsel upon notice that, in the event a higher degree of technology gave the lie to their assertions, I would in the exercise of the Court's supervisory powers direct reimbursement of the Government's expense.

The Government thereupon obtained the expert services of an electrical engineer, Mr. Paul Ginsberg. The success of Mr. Ginsberg's efforts is detailed in the prior Memorandum Opinion. Suffice it to say that his ministrations in respect of the tape made it perfectly clear that the affidavits filed on behalf of the defendant were affirmatively misleading, in their descriptions of tactical conversations which never took place.

I am satisfied by the Government's affidavit in support of the present application that the Government incurred expenses of $1,000 for the services of Mr. Ginsberg.

In these circumstances, the Government is entitled to a judgment against the defendant and his attorneys, Messrs. Gorski and Dizak, jointly and severally, for $1,000, with interest from the date the Ginsberg invoice was paid. The

attorneys are, in my view, liable for this reimbursement, because they were witnesses to the fact of what occurred during the conference in their chambers. As co-participants with defendant in that conference, it is equitable that they be made liable for reimbursement of an item of expense to which the Government was put, in order to demonstrate that factual allegations put forward jointly by defendant and his attorneys were groundless.

I have considered Mr. Gorski's affidavit in opposition to the Government's application. That affidavit, in essence, rehearses the arguments previously made in respect of the propriety of the Government's actions, and the legal consequences which defendant argued should flow from those actions. Those contentions, rejected by this Court and presumably now pending on appeal, do not affect the merits of the present application.

The Government may settle a judgment on five days' notice. It would appear that Messrs. Gorski and Dizak no longer represent Mr. Strulle. The Government must therefor make separate service upon Mr. Strulle and his former attorneys; and, if Mr. Dizak is no longer associated in the same offices with Mr. Gorski, separate service msut be accomplished on all three individuals affected by the proposed judgment.

Dated: New York, New York
December 7, 1979

/s/ CHARLES S. HAIGHT, JR.
CHARLES S. HAIGHT, JR.
U. S. D. J.

APPENDIX D

(Legislative History)

LEGISLATIVE HISTORY

P.L. 95-539

COURT INTERPRETERS ACT

P.L. 95-539, see page 92 Stat. 2040

Senate Report (Judiciary Committee) No. 95-569, Nov. 1, 1977 [To accompany S. 1315]

House Report (Judiciary Committee) No. 95-1687, Oct. 4, 1978 [To accompany H.R. 14030]

Cong. Record Vol. 123 (1977)

Cong. Record Vol. 124 (1978)

DATES OF CONSIDERATION AND PASSAGE

Senate November 4, 1977; October 13, 1978

House October 10, 1978

The Senate bill was passed in lieu of the House bill after amending its language to contain the text of the House bill.

The House Report is set out.

HOUSE REPORT No. 95-1687

[page 1]

The Committee on the Judiciary, to whom was referred the bill (H.R. 14030) to provide effectively for the use of interpreters in courts of the United States, and for other purposes, having considered the same, report favorably

thereon with amendments and recommend that the bill as amended do pass.

[page 2]

EXPLANATION OF AMENDMENTS

The committee amendments defer the effective date of the provisions of the bill and correct printing errors.

PURPOSE

The purpose of H.R. 14030 is to require the appointment of interpreters, who have been certified by the Director of the Administrative Office of the U.S. Courts, in Federal civil and criminal proceedings under specific conditions. H.R. 14030 makes additional substantive and technical changes to provide more effectively for the use of interpreters in Federal district courts, to comply with changes in the law and for other purposes.

• • •

Section 7 amends 28 U.S.C. § 1920 to permit the taxation of the compensation of interpreters, and the salaries, fees, expenses, and costs of special interpretation services under sections 1827 and 1828. Section 7 also makes express reference to the taxation of the compensation of a court appointed expert, as permitted by rule 706 of the Federal Rules of Evidence.

• • •

APPENDIX E

(28 USCS § 1828)

§ 1828. Special interpretation services

(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil actions initated by the United States (including petitions for writs of habeas corpus initiated in the name of the United States by relators) in a United States district court. The program shall provide a capacity for simultaneous interpretation services in multidefendant criminal actions and multidefendant civil actions.

(b) Upon the request of any person in any action for which special interpretation services established pursuant to subsection (a) are not otherwise provided, the Director, with the approval of the presiding judicial officer, may make such services available to the person requesting the services on a reimbursable basis at rates established in conformity with section 501 of the Act of August 31, 1951 (ch. 376, title 5, 65 Stat. 290; 31 U.S.C. 483a [31 USCS § 483a]), but the Director may require the prepayment of the estimated expenses of providing the services by the person requesting them.

(c) Except as otherwise provided in this subsection, the expenses incident to providing services under subsection (a) of this section shall be paid by the Director from sums appropriated to the Federal judiciary. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in a civil action, and any moneys collected as a result of such order may be used

to reimburse the appropriations obligated and disbursed in payment for such services.

(d) Appropriations available to the Director shall be available to provide services in accordance with subsection (b) of this section, and moneys collected by the Director under that subsection may be used to reimburse the appropriations charged for such services. A presiding judicial officer, in such officer's discretion, may order that all or part of the expenses shall be apportioned between or among the parties or shall be taxed as costs in the action.

APPENDIX F

(28 USCS § 1915)

§ 1915. Proceedings in forma pauperis

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

• • •

APPENDIX G

(28 USCS § 1920)

§ 1920. Taxation of costs

A judge or clerk of any court of the United States may tax as costs the following:

(1) Fees of the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title;

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title [28 USCS § 1828].

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

APPENDIX H

(28 USCS § 1925)

§ 1927. Counsel's liability for excessive costs

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously may be required by the court to satisfy personally such excess costs.

APPENDIX I

(Federal Rules of Evidence—Rule 702)

RULE 702

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, or education, may testify thereto in the form of an opinion or otherwise.

APPENDIX J

(Federal Rules of Evidence—Rule 706)

RULE 706

Rule 706. Court Appointed Experts

(a) Appointment.—The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any; his deposition may be taken by any party; and he may be called to testify by the court or any party. He shall be subject to cross-examination by each party, including a party calling him as a witness.

(b) Compensation.—Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the fifth amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

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APPENDIX K

(Federal Rules of Evidence—Rule 1101)

RULE 1101

Rule 1101. Applicability of Rules

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(d) Rules inapplicable.—The rules (other than with respect to privileges) do not apply in the following situations:

(1) Preliminary questions of fact.—The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104.

(2) Grand jury.—Proceedings before grand juries.

(3) Miscellaneous proceedings.—Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

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